

§ 414.904

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Wholesale acquisition cost (WAC) means the price described by section 1847A(c)(6)(B) of the Act.

[69 FR 66424, Nov. 15, 2004, as amended at 70 FR 39093, July 6, 2005; 75 FR 73626, Nov. 29, 2010]

§ 414.904 Average sales price as the basis for payment.

(a) *Method of payment.* Payment for a drug furnished on or after January 1, 2005 is based on the lesser of—

(1) The actual charge on the claim for program benefits; or

(2) 106 percent of the average sales price, subject to the applicable limitations specified in paragraph (d) of this section or subject to the exceptions described in paragraph (e) of this section.

(3) For purposes of this paragraph—

(i) CMS calculates an average sales price payment limit based on the amount of product included in a vial or other container as reflected on the FDA-approved label.

(ii) Additional product contained in the vial or other container does not represent a cost to providers and is not incorporated into the ASP payment limit.

(iii) No payment is made for amounts of product in excess of that reflected on the FDA-approved label.

(b) *Multiple source drugs*—(1) *Average sales prices.* The average sales price for all drug products included within the same multiple source drug billing and payment code is the volume-weighted average of the manufacturers' average sales prices for those drug products.

(2) *Calculation of the average sales price.* (i) For dates of service before April 1, 2008, the average sales price is determined by—

(A) Computing the sum of the products (for each National Drug Code assigned to the drug products) of the manufacturer's average sales price and the total number of units sold; and

(B) Dividing that sum by the sum of the total number of units sold for all NDCs assigned to the drug products.

(ii) For dates of service on or after April 1, 2008, the average sales price is determined by—

(A) Computing the sum of the products (for each National Drug Code assigned to such drug products) of the manufacturer's average sales price, de-

termined by the Secretary without dividing such price by the total number of billing units for the National Drug Code for the billing and payment code and the total number of units sold; and

(B) Dividing the sum determined under clause (A) by the sum of the products (for each National Drug Code assigned to such drug products) of the total number of units sold and the total number of billing units for the National Drug Code for the billing and payment code.

(iii) For purposes of this subsection and subsection (c), the term billing unit means the identifiable quantity associated with a billing and payment code, as established by CMS.

(c) *Single source drugs*—(1) *Average sales price.* The average sales price is the volume-weighted average of the manufacturers' average sales prices for all National Drug Codes assigned to the drug or biological product.

(2) *Calculation of the average sales price.* (i) For dates of service before April 1, 2008, the average sales price is determined by—

(A) Computing the sum of the products (for each National Drug Code assigned to the drug product) of the manufacturer's average sales price and the total number of units sold; and

(B) Dividing that sum by the sum of the total number of units sold for all NDCs assigned to the drug product.

(ii) For dates of service on or after April 1, 2008, the average sales price is determined by—

(A) Computing the sum of the products (for each National Drug Code assigned to such drug products) of the manufacturer's average sales price, determined by the Secretary without dividing such price by the total number of billing units for the National Drug Code for the billing and payment code and the total number of units sold; and

(B) Dividing the sum determined under clause (A) by the sum of the products (for each National Drug Code assigned to such drug products) of the total number of units sold and the total number of billing units for the National Drug Code for the billing and payment code.

(d) *Limitations on the average sales price*—(1) *Wholesale acquisition cost for a single source drug.* The payment limit

for a single source drug product is the lesser of 106 percent of the average sales price for the product or 106 percent of the wholesale acquisition cost for the product.

(2) *Payment limit for a drug furnished to an end-stage renal disease patient.* (i) Effective for drugs and biologicals furnished in 2005, the payment for such drugs and biologicals, including erythropoietin, furnished to an end-stage renal disease patient that is separately billed by an end-stage renal disease facility and not paid on a cost basis is acquisition cost as determined by the Inspector General report as required by section 623(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 inflated by the percentage increase in the Producer Price Index.

(ii) Except as provided in paragraph (a) of this section, the payment for drugs and biologicals, furnished to an end-stage renal disease patient that is separately billed by an end-stage renal disease facility, is based on 106 percent of the average sales price.

(iii) Effective for drugs and biologicals furnished in CY 2006 and subsequent calendar years, the payment for such drugs and biologicals furnished in connection with renal dialysis services and separately billed by freestanding and hospital-based renal dialysis facilities not paid on a cost basis is the amount determined under section 1847A of the Act.

(3) *Widely available market price and average manufacturer price.* If the Inspector General finds that the average sales price exceeds the widely available market price or the average manufacturer price by the applicable threshold percentage specified in paragraph (d)(3)(iii) or (iv) of this section, the Inspector General is responsible for informing the Secretary (at such times as specified by the Secretary) and the payment amount for the drug or biological will be substituted subject to the following adjustments:

(i) The payment amount substitution will be applied at the next average sales price payment amount calculation period after the Inspector General informs the Secretary (at such times specified by the Secretary) about billing codes for which the average sales

price has exceeded the average manufacturer price by the applicable threshold percentage, and will remain in effect for 1 quarter after publication.

(ii) Payment at 103 percent of the average manufacturer price for a billing code will be applied at such times when all of the following criteria are met:

(A) The threshold for making price substitutions, as defined in paragraph (d)(3)(iii) of this section is met.

(B) 103 percent of the average manufacturer price is less than the 106 percent of the average sales price for the quarter in which the substitution would be applied.

(C) Beginning in 2013, the drug and dosage form described by the HCPCS code is not identified by the FDA to be in short supply at the time that ASP calculations are finalized.

(iii) The applicable percentage threshold for average manufacturer price comparisons is 5 percent and is reached when—

(A) The average sales price for the billing code has exceeded the average manufacturer price for the billing code by 5 percent or more in 2 consecutive quarters, or 3 of the previous 4 quarters immediately preceding the quarter to which the price substitution would be applied; and

(B) The average manufacturer price for the billing code is calculated using the same set of National Drug Codes used for the average sales price for the billing code.

(iv) The applicable percentage threshold for widely available market price comparisons is 5 percent.

(e) *Exceptions to the average sales price—(1) Vaccines.* The payment limits for hepatitis B vaccine furnished to individuals at high or intermediate risk of contracting hepatitis B (as determined by the Secretary), pneumococcal vaccine, and influenza vaccine and are calculated using 95 percent of the average wholesale price.

(2) *Infusion drugs furnished through a covered item of durable medical equipment.* The payment limit for an infusion drug furnished through a covered item of durable medical equipment is calculated using 95 percent of the average wholesale price in effect on October 1, 2003 and is not updated in 2006.

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(3) *Blood and blood products.* In the case of blood and blood products (other than blood clotting factors), the payment limits are determined in the same manner as the payment limits were determined on October 1, 2003.

(4) *Payment limit in a case where the average sales price during the first quarter of sales is unavailable.* In the case of a drug during an initial period (not to exceed a full calendar quarter) in which data on the prices for sales of the drug are not sufficiently available from the manufacturer to compute an average sales price for the drug, the payment limit is based on the wholesale acquisition cost or the applicable Medicare Part B drug payment methodology in effect on November 1, 2003.

(5) *Treatment of certain drugs.* Beginning with April 1, 2008, the payment amount for—

(i) Each single source drug or biological described in section 1842(o)(1)(G) that is treated as a multiple source drug because of the application of section 1847A(c)(6)(C)(ii) is the lower of—

(A) The payment amount that would be determined for such drug or biological applying section 1847A(c)(6)(C)(ii); or

(B) The payment amount that would have been determined for such drug or biological if section 1847A(c)(6)(C)(ii) were not applied.

(ii) A multiple source drug described in section 1842(o)(1)(G) (excluding a drug or biological that is treated as a multiple source drug because of the application of section 1847A(c)(6)(C)(ii)) is the lower of—

(A) The payment amount that would be determined for such drug or biological taking into account the application of section 1847A(c)(6)(C)(ii); or

(B) The payment amount that would have been determined for such drug or biological if section 1847A(c)(6)(C)(ii) were not applied.

(f) Except as otherwise specified (see paragraph (e)(2) of this section) for infusion drugs, the payment limits are updated quarterly.

(g) The payment limit is computed without regard to any special packaging, labeling, or identifiers on the dosage form or product or package.

(h) The payment amount is subject to applicable deductible and coinsurance.

(i) If manufacturer ASP data is not available prior to the publication deadline for quarterly payment limits and the unavailability of manufacturer ASP data significantly changes the quarterly payment limit for the billing code when compared to the prior quarter's billing code payment limit, the payment limit is calculated by carrying over the most recent available manufacturer ASP price from a previous quarter for an NDC in the billing code, adjusted by the weighted average of the change in the manufacturer ASPs for the NDCs that were reported for both the most recently available previous quarter and the current quarter.

(j) *Biosimilar biological products.* Effective July 1, 2010, the payment amount for a biosimilar biological drug product (as defined in § 414.902 of this subpart) is the sum of the average sales price of all NDCs assigned to the biosimilar biological product as determined under section 1847A(b)(6) of the Act and 6 percent of the amount determined under section 1847A(b)(4) of the Act for the reference drug product (as defined in § 414.902 of this subpart).

[69 FR 66424, Nov. 15, 2004, as amended at 70 FR 70332, Nov. 21, 2005; 71 FR 69788, Dec. 1, 2006; 72 FR 66402, Nov. 27, 2007; 73 FR 69937, Nov. 19, 2008; 73 FR 80304, Dec. 31, 2008; 74 FR 62012, Nov. 25, 2009; 75 FR 73626, Nov. 29, 2010; 76 FR 73473, Nov. 28, 2011; 77 FR 69368, Nov. 16, 2012]

§ 414.906 Competitive acquisition program as the basis for payment.

(a) *Program payment.* Beginning in 2006, as an alternative to payment under § 414.904, payment for a CAP drug may be made through the CAP if the following occurs:

(1) The CAP drug is supplied under the CAP by an approved CAP vendor as specified in § 414.908(b).

(2) The claim for the prescribed drug is submitted by the approved CAP vendor that supplied the drug, and payment is made only to that vendor.

(3) The approved CAP vendor collects applicable deductible and coinsurance with respect to the drug furnished under the CAP only after the drug is administered to the beneficiary.

(4) The approved CAP vendor delivers CAP drugs directly to the participating